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Gina N. Shishima
Fulbright & Jaworski L.L.P.
Suite 2400
600 Congress Ave.
Austin, TX 78701

COPY MAILED

In re Application of : MAR 19 2004
Yeh et al. :
Application No. 10/624,945 : OFFICE OF PETITIONS
Filed: July 22, 2003 : Decision on Petition
Attorney Docket Number: :
UTSH:245USC1 :
:

This is a decision in response the Petition Under 37 CFR 1.53(e) to Accord Filing Date and Response to Notice to File Missing Parts of Nonprovisional Application Filed Under 37 CFR 1.53(b), filed January 26, 2003 (Certificate of Mailing dated January 21, 2004).

The petition is granted.

The application was filed on July 22, 2003. However, on December 30, 2003, the Office of Initial Patent Examination mailed a Notice to File Missing Parts of Nonprovisional Application (hereinafter ("Notice"), noting, *inter alia*, that a filing date had been accorded the application; however, the application did not contain a statement that the content of the sequence listing information recorded in computer readable form is identical to the written (on paper or compact disc) sequence listing and, where applicable, includes no new matter as required by 37 CFR 1.821(e), 1.821(f), 1.821(g), 1.825(b), or 1.825(d).

The Notice further advised Applicant that drawing Figure 5C described in the specification appeared to have been omitted from the application.

In response, Petitioner files the instant petition wherein Petitioner avers that a filing date has not been accorded the application for a failure to supply Figure 5C. Applicant further avers that drawing Figure 5C, and a statement that the content of the sequence listing information recorded in computer readable form is identical to the written (on paper or compact

disc) sequence listing were originally filed with the application on July 22, 2003, and was received by this Office as evidenced by the return-receipt postcard. In support, Applicant provides a copy of a return receipt postcard acknowledging receipt of, *inter alia*, 10 sheets of drawings on July 22, 2003, and a Request to Transfer Sequence Listing on July 22, 2003.

A review of the return receipt postcard reveals that Petitioner is correct. The postcard acknowledges receipt of, *inter alia*, 10 sheets of drawings on July 22, 2003, and a Request to Transfer Sequence Listing on July 22, 2003. Petitioner has also re-submitted 10 sheets of drawings and the Request to Transfer Sequence Listing with the instant petition. A review of the Request to Transfer Sequence Listing reveals that it contains a statement that the content of the sequence listing information recorded in computer readable form is identical to the sequence information contained in the previously filed computer readable sequence listing in the parent application.

Evidence of receipt of any correspondence filed in the Patent and Trademark Office can be obtained by submitting a self-addressed postcard properly itemizing and identifying the paper or papers being filed. Upon receipt of the correspondence, the Patent and Trademark Office will check the listing on the post card against the papers submitted, making sure that all items listed are present and will then stamp the postcard with an Official date stamp and place the postcard in the outgoing mail. "A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all items listed thereon by the PTO." MPEP § 503.

The copies of the drawing Figure 5C and Request to Transfer Sequence Listing, supplied on January 26, 2004, will be used for examination purposes.

The petition fee has been refunded to deposit account 50-1212 as authorized in the instant petition.

The application will be returned to the Office of Initial Patent Examination for further processing as a nonprovisional application with a filing date of July 22, 2003, and an indication that 10 sheets of drawings and a statement that the

content of the sequence listing information recorded in computer readable form is identical to the written (on paper or compact disc) sequence listing were present on filing, using drawing Figure 5C and Request to Transfer Sequence Listing filed on January 26, 2004.

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 305-0014.

Derek Woods
Derek L. Woods
Petitions Attorney
Office of Petitions